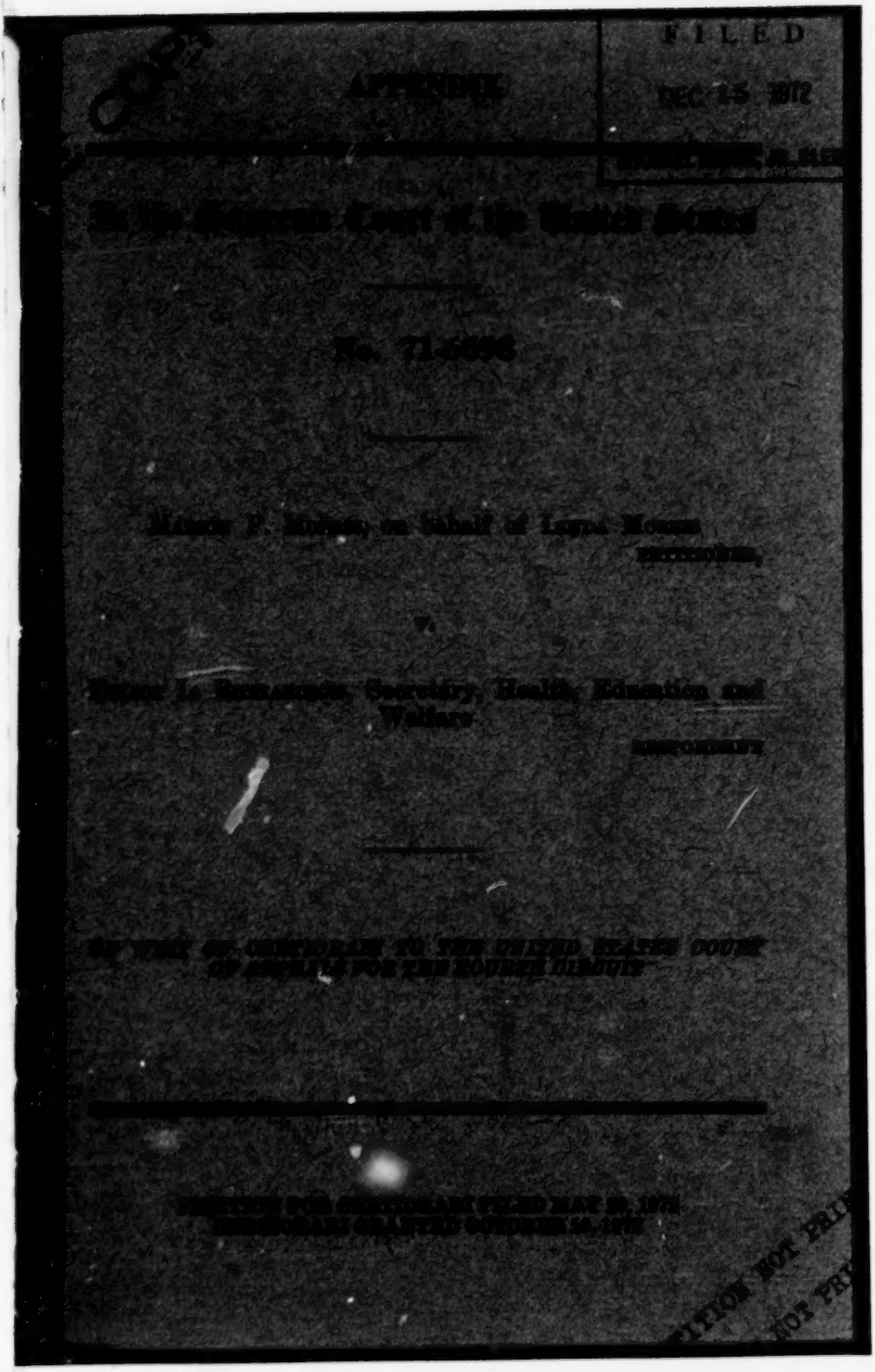

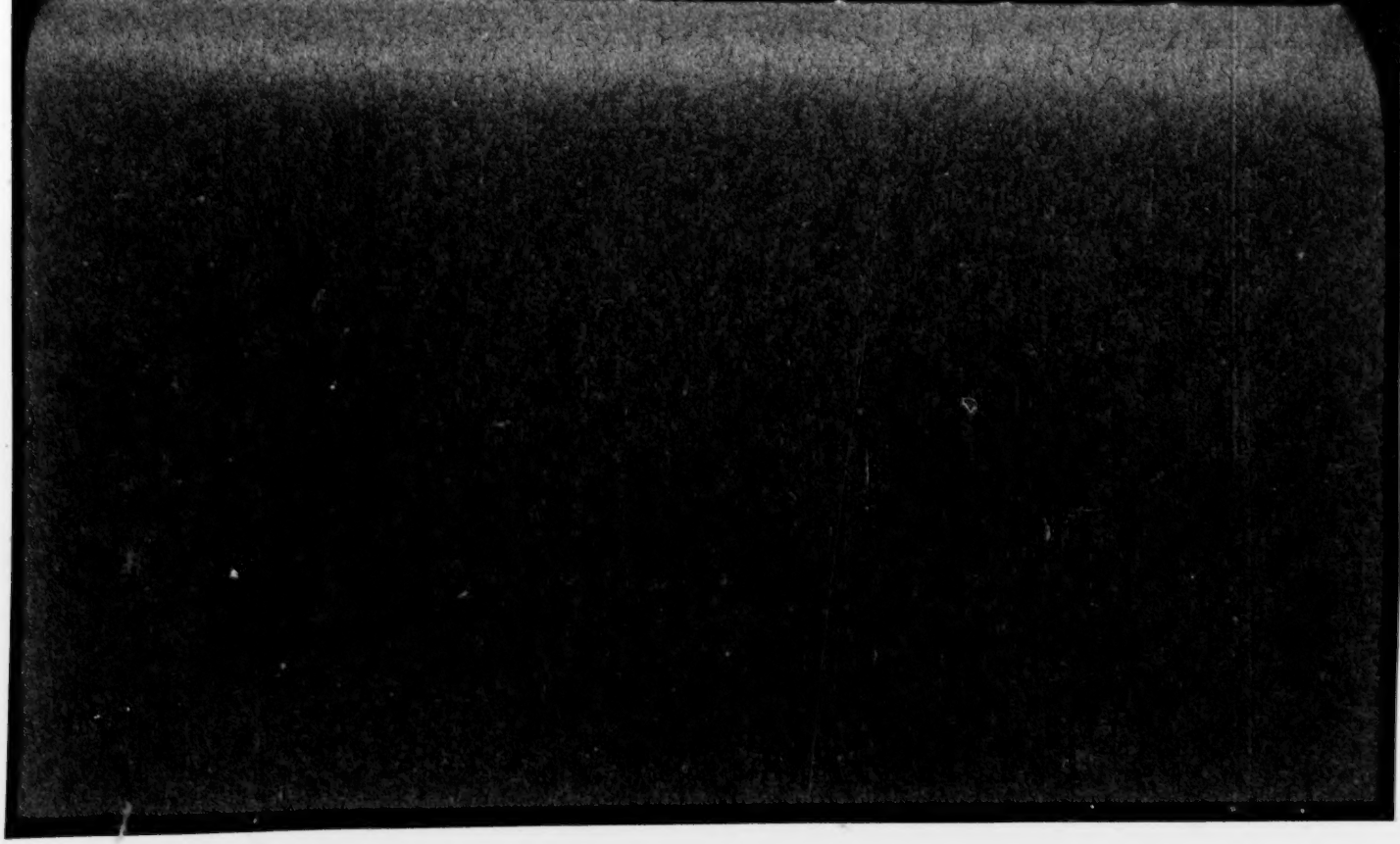

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Relevant Docket Entries in the Court of Appeals and the District Court

In the United States District Court,
Southern District of West Virginia,
Civil Action No. 69-145 CH

1969	
July 9	Filed complaint
9	Issued summons and 3 copies (Ret. 60 days)
Aug. 5	Filed Marshal's return on summons (served U.S. Atty., Atty. Gen. & Secy HEW)
Aug. 25	Order extending time for defendant to file answer to and including November 7, 1969
25	Filed motion of Asst. U.S. Atty. for an extension of time to file answer
Oct. 30	Filed Answer of Defendant, with certificate of service, and transcript of proceedings
Dec. 16	Filed Defendant's Motion for Summary Judgment, with certificate of service
1971	
Apr. 29	Filed Court's Memorandum Opinion
May 10	Order, defendant's motion for summary judgment overruled, final decision of Secretary reversed and remanded, etc.
July 6	Filed Defendant's Notice of Appeal, together with letter of notice to counsel
Aug. 9	To preparing and certifying record on appeal to Clerk, U.S. Court of Appeals at Richmond

IN THE COURT OF APPEALS FOR
THE FOURTH CIRCUIT, No. 71-1757

1971

Aug. 10	Record on appeal in one volume (Volume I) filed and appeal docketed
10	Administrative transcript in one volume (Volume II) filed
Sept. 24	Brief for appellant filed
24	Appendix for appellant filed
Oct. 20	Brief for appellee filed
Dec. 6	Cause argued before Bryan, Winter, and Butzner, Circuit Judges, and submitted

1972

Jan. 28	Opinion of the Court filed per curiam, Bryan, Circuit Judge, dissenting
28	Judgment filed, reversing judgment of the District Court
Feb. 14	Petition for rehearing filed
Feb. 22	Order denying petition for rehearing with Judge Bryan dissenting, filed
22	Certified copy of the judgment and printed copy of the opinion transmitted to the Clerk of the District Court at Charleston, West Virginia

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Social Security Administration
Bureau of Old-Age and Survivors Insurance

100

DISABILITY DETERMINATION

(For OASI Use)

3

NAME OF APPLICANT: MARION P. MORRIS
SOCIAL SECURITY NO.: 232-18-6110
ADDRESS: Box 85 Eunice West Virginia
DATE APPLICATION FILED: 6/8/57
DATE OF BIRTH: 11/8/04

FINDING OF DISABILITY

1. In accordance with sec. 216(i) of the Social Security Act, and upon consideration of all the facts, it is determined that the applicant

☒ Was under a disability from 9/3/53 (DATE)

☐ Was not under a disability

2. Diagnoses: Residual fracture left [illegible] Anxiety reaction Duodenal Ulcer Quiescent

BASIS FOR DETERMINATION

3. (a) Applicant alleges inability to engage in substantial gainful activity beginning 9 (MONTH) [illegible] (DAY) 53 (YEAR) at age 49

(b) There are no earnings of consequence after the alleged date of disability ☒

(c) There are significant earnings after the alleged date of disability. See "Remarks" below. ☐

(d) Occupation and education: Laborer - 8th Gr.

(e) Remarks:

Med Evidence shows 50% partial Disability of spine and 30% of disability as per schedule, Nervous tension & severe stomach disorder. Ulcer & gall bladder trouble. Ulcer and cough (Smoker's throat). On occasion if employed to the work Bank of education and vocational background w/in limitations to FINDING AS TO DISABILITY PERIOD under schedule

CONTINUED ON ATTACHED SHEET

5. Applicant had 7 Q/C in the 40 quarters and 6 Q/C in the 13 quarters ending 9/53

6. Applicant ☐ does not ☐ does have the qualifying quarters for coverage. ✓

7. A period of disability ☐ is not established ☐ is established from 9/3/53 to Continuing

☑ DDO ☐ AO

LTR. NO. F/2

PAR. NO. 136 A (1)

8. REMARKS: Hrg. review OA-D83 dated 6/11/57

EXHIBIT 9 (1 pg)

RE-EXAM REQUIRED ON: (DATE) None

SIGNATURE: E H Osborne
TITLE: Disability Examiner
DATE: 6/11/57

SIGNATURE: K Merriman
TITLE: Disability Reviewer
DATE: 6/15/57

FOR AO USE

FORM OA-D832 (12-55)

POOR COPY

IN THE JUVENILE COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN THE MATTER OF:

The petition of Marion P. Morris and Dora Elizabeth Morris, his wife, for permission to adopt Linda Gail Kinder, a minor child, and the change of her name to Linda Gail Morris, filed in the Juvenile Court of Raleigh County, West Virginia.

On the 13th day of October, 1966, the petitioners, Marion P. Morris and Dora Elizabeth Morris, his wife, by their counsel, Donald E. Jarrell, presented to the Judge of said Court, their petition, duly verified, praying that they be granted permission and allowed to adopt Linda Gail Kinder, a minor child, and to change her name to Linda Gail Morris; the mother of said child being Rosemary Morris Kinder, and the father of said child being Paul Ray Kinder, and moved the Judge of said Court to file said petition and refer the matter to Joe Asbury, Town Policeman for Whitesville, West Virginia, for investigation and report to this Court, and set the same down for hearing, which motion was granted by an order entered was ordered filed and referred to Joe Asbury, Town Policeman for Whitesville, West Virginia, for investigation and report to this Court, and said matter was set down for hearing on the 13th day of October, 1966, at 2 o'clock.

On this, the 13th day of October, 1966, said petition accordingly came on to be heard, and the following were present at the hearing: the petitioners, Marion P. Morris and Dora Elizabeth Morris, his wife, in person, and Donald E. Jarrell, their counsel.

Thereupon the Judge of said Court proceeded to a full hearing of the petition, and the petitioners were examined by said Judge under oath upon the matters touching the subject of this proceeding, and Joe Asbury, Town Policeman for Whitesville, West Virginia, having made an investigation, reported favorably for this adoption, no other party interested being present, in person or by counsel.

Upon consideration of all of which the Judge of said Court is of the opinion that the facts stated in the petition are true; that the mother of said Linda Gail Kinder is

Rosemary Morris Kinder, and the father of said child is Paul Ray Kinder; that said petitioners have had uninterrupted custody of said minor child since the 29th day of November, 1965; that petitioners are of good moral character and are of respectable standing in the community in which they live; that petitioners are able to maintain and educate the said minor child properly; and that the best interests of said child will be promoted by the Court's permitting and allowing the said petitioners to adopt said child; and that said minor child is not possessed of any property.

It is therefore adjudged, ordered and decreed that the said petitioners, Marion P. Morris and Dora Elizabeth Morris, his wife, be, and they are, hereby granted permission and allowed to adopt the said Linda Gail Kinder, a minor child, and the said minor child's name is ordered changed to Linda Gail Morris, by which name she shall hereafter be known.

And it is further adjudged, ordered and decreed that from the date of this decree the rights, duties, privileges and relations heretofore existing between the said minor child and her parents by adoption shall henceforth, in all respects, be the same, including the right of inheritance, as if the said child had been born to the adopting parents, Marion P. Morris and Dora Elizabeth Morris, his wife, in lawful wedlock, except as otherwise provided by statute.

From said petition and the evidence adduced at the hearing thereon, the Judge of said Court finds that the said Linda Gail Kinder, an infant child was born on the 7th day of March, 1965, at Parma Community General Hospital, Parma, Ohio.

It is further adjudged, ordered and decreed that all the matters adjudged, ordered and decree in this hearing are to be filed in the Clerk's Office of this Court in the book provided for the recording of adoptions and the necessary information be delivered to the Registrar of the Bureau of Vital Statistics, Charleston, West Virginia, as required by law.

ENTER:

/s/ Harry L. McCreery
HARRY L. MCCREERY
Judge

Department of Health, Education and Welfare
Social Security Administration

APPLICATION FOR CHILD'S INSURANCE BENEFITS
(For Children of Living Wage Earner or Self-Employed Person)

Form Approved
Budget Bureau No. 72-R130.12 90
(Do not write in this space)

2/28/68
Pawtucket, R.I.

NOTICE - Whoever (a) makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act, or (b) who, having received a payment for the use and benefit of another person, knowingly and willfully uses such payment for other than the person for whom it is received, is subject, under the Social Security Act, to a fine of not more than $1,000 or 1 year's imprisonment, or both.

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON (hereafter referred to as "Worker")	SOCIAL SECURITY NUMBER
Marion P. Morris YOUR NAME IN FULL	232 | 18 | 6110

I hereby apply on behalf of the child or children listed in Item 1 below, for all insurance benefits payable to them under Title II of the Social Security Act, as amended. (Answer the questions on this form with respect to yourself if you are applying for a child's benefit on your own behalf--for example, if you are a student age 18 to 22 or a disabled child age 18 or over.)

1. Enter below the information requested for ALL unmarried living children of the worker who during the last 13 months (counting the present month), were (a) under age 18, or (b) age 18 to 22 and attending school, or (c) age 18 or over and under a disability (which must have begun before age 18). If you enter information for a child age 18 or over, check "student" or "disabled" if such child is a student or disabled. Include stepchildren, adopted, and illegitimate children. If you are not applying for any child you name, enter the child's name under "Remarks" (page 4 of this form) and explain why you are not applying for such child. (You may apply for a child even though you do not wish to be the payee for the child's benefits.)

FULL NAME OF CHILD (Please list children in order of birth, beginning with the oldest)	DATE OF BIRTH (Mo., day, yr.)	CHECK (✓) IF CHILD 18 OR OVER IS STUDENT OR DISABLED		CHECK (✓) THE COLUMN THAT SHOWS THE CHILD'S RELATIONSHIP TO THE WORKER			
		Student	Disabled	Legitimate	Stepchild	Adopted	Illegitimate
Linda A. Morris	3/7/63					✓	
				EXHIBIT 5 (4 pages)			

2. If any children in item 1 are stepchildren of the worker enter the date the worker married the natural parent — DATE OF MARRIAGE: n/a

3. If any children in item 1 are adopted children of the worker, enter below the name of each such child and the date the worker adopted him (her).

NAME OF ADOPTED CHILD	DATE OF ADOPTION
( )	
Pierce	

Form OA-C1 (Over)

POOR COPY

4. **Have any children in Item 1 ever been adopted by someone other than the worker?** ☐ Yes ☑ No

(If "Yes," enter the following information)

Name of Child	Date of Adoption

5. **(a) Have all of the children in Item 1 lived with the above worker during each of the last 12 months (counting the present month)?** ☑ Yes ☐ No

(If "No," enter in the chart below the information asked for.)

Name of Child Who Did Not Live With The Worker in Each of The Last 12 Months	Persons With Whom Child Lived			Last Each Month In Which This Child Did Not Live With The Worker
	Name	Address	Relationship to Child	

6. **If the above worker is the mother, adopting mother, or stepmother, which of the children in Item 1 were:**

(a) Living with their father or adopting father? *(If none, write "None")*

(b) Receiving contributions from their father or adopting father? *(If none, write "None")*

7. **Has any child in Item 1 ever had a social security number?** ☐ Yes ☑ No

(If "Yes," enter the following information for each child having a number.)

Name of Child	Social Security Number

8. **Has anyone ever before filed an application for social security benefits on behalf of any child in Item 1?** ☑ Yes ☐ No

(If "Yes," enter below the name(s) and social security number(s) of the person(s) on whose earnings record any other claim was based.)

Name of Wage Earner or Self-employed Person	Social Security Number
this Case	

9. **Do you understand that all payments made to you on behalf of a child must be spent for his present needs or (if not presently needed) saved for his future needs, and do you agree to use the benefits that way?** ☑ Yes ☐ No

10. **Do you agree to notify the Social Security Administration promptly when you no longer have responsibility for the welfare and care of any child for whom you are filing?** ☑ Yes ☐ No

If you are filing ONLY for a child age 18 or over who is disabled, you may omit items 11, 12, and 13 and go on to item 14. In all other cases, items 11, 12, and 13 must be answered. 42

Some or all of a child's benefits may not be payable if such child works for more than the monthly limit on employment (as defined below) or renders substantial services in self-employment in any month, and has earnings in excess of the exempt amount (as defined below) for the taxable year.* This applies to all employment and self-employment, whether or not covered by the Social Security Act. 140 1680

The "monthly limit" is $100 per month for months in a taxable year ending prior to 1966 and $140 per month for any taxable year ending after 1965. If the taxable year is a calendar year, the $140 amount is effective January 1966.

The "exempt amount" of total earnings which a child may earn without deduction from benefits is $1,200 per year for a taxable year which ends before 1966. It is $1,500 per year for taxable years ending after 1965. If the taxable year is a calendar year, $1,500 is the exempt amount beginning 1966.

11. **(a) Do you expect the total earnings of any child to be more than the exempt amount this year? (Count all earnings beginning with the first of this year and all anticipated earnings through the end of this year.)** ☐ Yes ☑ No

(If "Yes," answer (b) and (c) below. If "No," go on to item 12.)

(b) Enter the name of each child who will earn more than the exempt amount this year and the amount of expected earnings.

Name of Child	Expected Earnings
	$
	$

(c) Did every child named in (b) earn more than the monthly limit in employment or render substantial services in self-employment in all months of this year including the present month? ☐ Yes ☐ No

(If "No," enter the information asked for in the chart below.)

Name of Child	List Each Month That Child Did Not Earn More Than The Monthly Limit in Employment and Did Not Render Substantial Services in Self-Employment

12. **Did any child earn more than the exempt amount last year?** ☐ Yes ☑ No

(If "Yes," enter the information asked for in the chart below.)

Name of Child That Earned Over The Exempt Amount Last Year	Total Earnings of Child	List Each Month That Child Did Not Earn More Than The Monthly Limit in Employment and Did Not Render Substantial Services in Self-Employment

*If the child's last statement of his self-employment income in the same taxable year is not for the full 12 months, or if the child's self-employment income for the taxable year is for a period other than 12 months, enter here the months of the child and the months of the last year in which

LIST BY CHILD AND MONTH FISCAL YEAR ENDS

(Over)

POOR COPY

13. An annual report of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any year in which any child earned more than the exempt amount and received a benefit payment for a month in that year. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ADDITIONAL MONTHLY BENEFITS. 93

Do you agree to file the annual report of earnings when required? ☒ Yes ☐ No

Complete Item 14 in all cases.

14. The events listed below end (or may end) a child's entitlement to Social Security Benefits. If any one of these events occurs, you must notify the Social Security Administration. For some events, there are certain exceptions to the general rule that the event ends entitlement. Such exceptions are explained in the printed reporting instructions which will be given to you. However, you must report an event even if you believe an exception applies. The Social Security Administration will advise you what additional information and evidence, if any, is needed, and will give you a decision on whether the child's benefits may continue.

If you are receiving benefits on behalf of:

(a) Any child, – report if the child MARRIES, DIES, or is LEGALLY ADOPTED.

(b) A child age 18 to 22 entitled as a full-time student, – report if the child STOPS ATTENDING SCHOOL, REDUCES HIS ATTENDANCE, or CHANGES SCHOOLS.

(c) A child age 18 or over entitled because he is under a disability, – report if the child's DISABLING CONDITION IMPROVES, the child GOES TO WORK, or – if the child is now hospitalized – when the child is DISCHARGED FROM THE HOSPITAL.

Do you agree to notify the Social Security Administration promptly if any of the above events occur, and to promptly return any benefit check you receive for a child if the check is for a month in or after a month in which any of the above events occurred? ☒ Yes ☐ No

REMARKS: (This space may be used for explaining any answers to the questions.)

The Adoption was not Supervised by a public or private child placement Agency.

Knowing that anyone making a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

If mark (X) Application has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses.

1. NAME

ADDRESS (Number and Street, City, State and ZIP Code)

2. NAME

ADDRESS (Number and Street, City, State and ZIP Code)

SIGNATURE OF APPLICANT (Write in ink)

SIGN HERE ➧ 51 40 A

Marion Pittman

MAILING ADDRESS (Number and Street, P.O. Box, or Rural)

Box 357

CITY, STATE AND ZIP CODE

Whiteville, N.C. 28472

DATE (Month, Day and Year) 8-22-68

TELEPHONE NUMBER

ENTER NAME OF COUNTY (or similar) IN WHICH YOU NOW LIVE

Raleigh

DETERMINATION OF DISALLOWANCE

DISTRICT OFFICE	D/O CODE	WAGE EARNER'S NAME	ACCOUNT NO
Beckley W Va	313	Marion P Morris	232-18-6710
PAYMENT CENTER			HF- / / - /
BCI			

List only the basic reason in the CODE NO. block below. If this code number requires a fill-in, enter the information under "Remarks." Show any additional reasons under "Remarks."

SYMBOL	CODE NO.	NAME AND ADDRESS OF CLAIMANT	FILING DATE
HCl	F-10	Marion P Morris for Linda G Morris Box 367 Whitesville, W. Va. 25209	02/28/69

Fill in when any disallowance code 01-26 is listed:

WAGE EARNER BORN ON	WAGE EARNER DIED ON

Number of quarters required to be fully insured	
Number of quarters the wage earner has	
Number of quarters toward currently insured status	

REMARKS

EXHIBIT 6 (3 pages)

DISALLOWANCE NOTICE NO. (SHOW NECESSARY FILL-INS)	PARAGRAPHS IN ORDER OF APPEARANCE ON NOTICE (SHOW NECESSARY FILL-INS)
D OH-DL 829	-5

ADDITIONAL INSTRUCTIONS Sec. 407 amended by the Social Security Act provides in section 7 of the Act, regarding adoption of a child by a person who [illegible] that a child who is adopted by a person who [illegible] the adoption was subsequent to the death of the wage earner, no benefits are payable on the basis of the wage [illegible]

DETERMINATION BY	DATE	APPROVED BY	DATE
[signature]	02/28/69	[signature]	2/28/69
X CLAIMS REPRESENTATIVE ___ CLAIMS AUTHORIZER ___ FIELD REPRESENTATIVE ___ OTHER (specify)		TITLE CLAIMS AUTHORIZER	

FORM SSA-201 [illegible]

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DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

HEARING EXAMINER'S DECISION

In the case of	Claim for
Marion P. Morris o/b/o Linda Gail Morris (*Claimant*) Marion P. Morris (*Wage Earner*)	Child's Insurance Benefits 232-18-6710 (*Social Security Account Number*)

This case is before the undersigned Hearing Examiner upon a request for hearing filed July 16, 1968, by Marion P. Morris, the claimant and wage earner (on behalf of his adopted child, Linda Gail Morris), who is dissatisfied with prior determinations of the Social Security Administration whereby applications for child's insurance benefits under the Social Security Act were denied. Marion P. Morris is a disabled wage earner, who has been receiving Social Security disability insurance benefits since July, 1957 (having had a period of disability established prior to 1957). The claimant filed an application on behalf of Linda Gail Morris for child's insurance benefits on October 22, 1966. Such application was denied on November 14, 1966, whereby reconsideration was thereafter sought. However, pursuant to such reconsideration, the aforesaid denial was affirmed and the claimant so notified by letter dated May 10, 1967. No timely further appeal was taken from such denial.

Claimant, on behalf of Linda Gail Morris, again filed an application for child's insurance benefits on February 28, 1968 (presumably because of certain legislation enacted in 1968, modifying the child's insurance benefit provisions of the Social Security Act). However, such application was denied March 15, 1968, on the basis that adoption of the child, Linda Gail Morris, was not supervised by a public or private child placement agency, under the construction then placed upon newly-enacted Section 202(d)(8)(E).

Such latter subparagraph (E) was enacted in January, 1968, as a part of the so-called "Social Security Amendments of 1967." This paragraph, and other appropriate sections of the Social Security Act, will be discussed hereinafter. After the initial denial of claimant's second application, reconsideration was requested; after reconsideration, the aforesaid denial was affirmed on grounds similar to the foregoing, except that reference was made (Exhibit 8, p. 3) to a supposed requirement that the adoption needed to have been supervised by the West Virginia Department of Public Welfare (there is no such requirement in the Act), and the claimant was so notified by letter dated June 28, 1968. (There was an untimely request for hearing filed prior to the aforesaid reconsideration determination, which necessarily resulted in its denial by a Hearing Examiner, who issued a dismissal order dated April 24, 1968; administrative remedies should, of course, be exhausted prior to the entertainment of a hearing request.)

Pursuant to claimant's timely request for hearing (filed July 16, 1968, as aforesaid), the undersigned Hearing Examiner assumed jurisdiction over this matter. In view of the posture of the present case, it is the opinion of the undersigned Hearing Examiner, however, that an oral hearing is not necessary herein; certain legal issues are presented which, if resolved in a manner favorable to the claimant, provide an adequate basis for entitlement to child's insurance benefits. Other than official notice of certain well-established facts pertaining to juvenile courts (which, presumably, would come within the generic definition of "public child placement agency" pursuant to Section 202(d)(8)(E)—particularly the functions of juvenile courts in West Virginia under appropriate statutes), further evidence, in the nature of testimonial evidence, is deemed unnecessary in this case, in view of the findings and conclusions hereinafter made. The Hearing Examiner incorporates, as a part of the record for decision herein, documents marked as Exhibits 1 through 12.

The controlling provisions of the Social Security Act, as amended by the 1965 (and 1967) Social Security Amendments, are Section 202(d)(1)—particularly subparagraph (C), clause (i) thereof; Section 202(d)(3); and Section

202(d)(8)—particularly subparagraph (E) of such latter provision.

Section 202(d)(1) of the Social Security Act, as amended, 42 U.S.C. 402(d)(1), reads as follows:

> "202(d)(1) Every child (as defined in section 216 (e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual if such child—
>
> (A) has filed application for child's insurance benefits,
> (B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 223(d) which began before he attained the age of eighteen, and
> (C) was dependent upon such individual—
>
> (i) if such individual is living, at the time such application was filed,
> (ii) if such individual has died, at the time of such death, or
> (iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,
>
> shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs—
>
> (D) the month in which such child dies, marries, or is adopted (except for adoption by a stepparent, grandparent, aunt, uncle, brother, or sister subsequent to the death of such fully or currently insured individual),
> (E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii)

is not a full-time student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22, or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18, the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month.

* * *

It would clearly appear in this case, from facts to be noted hereinafter, that the child, Linda Gail Morris, was dependent upon the wage earner, referred to as "such individual" in paragraph (C) at the appropriate time specified in clause (i) thereunder. There is no doubt that the wage earner is a living individual, and was such "at the time such application [the child insurance benefit application] was filed," within the meaning of Section 202(d)(1)(C)(i). This alone should be enough to entitle the child to child's insurance benefits even as sought by the prior application, irrespective of the somewhat more restrictive requirements of clause (iii) of subparagraph (C) which purport to require dependency on a living disabled wage

earner as of certain restricted periods of time in order for benefit entitlement to be warranted under such provision; however, it should be especially noted that the disjunctive "or" appears just before clause (iii), which would thus warrant the application of any of the previous clauses if such previous clause fits the facts of the case. It can hardly be gainsaid that clause (i) fits the facts of the instant case because, although the wage earner is disabled, he is definitely a "living" wage earner within the clear literal meaning of clause (i).

If the above were not sufficient for entitlement in the instant case, Section 202(d)(3) certainly would be sufficient to provide entitlement. Section 202(d)(3) reads as follows:

> "202(d)(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) unless, at such time, such individual was not living with or contributing to the support of such child and—
>
> (A) such child is neither the legitimate nor adopted child of such individual, or
>
> (B) such child has been adopted by some other individual. For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) shall be deemed to be the legitimate child of such individual."

As will be seen hereinafter, the claimant's case comports squarely with the "deemed dependency" provision of 202(d)(3).

Apparently, what has been used by the prior determination components of the Social Security Administration as a basis for the previous denials herein (in connection with both the first and second applications) were the provisions of aforesaid Section 202(d)(1)(C)(iii), and Section 202(d)(8)(E).

Section 202(d)(8) of the Social Security Act, as amended by the 1967 Amendments, reads as follows:

> "202(d)(8) In the case of—
>
> (A) an individual entitled to disability insurance benefits, or
>
> (B) an individual entitled to old-age insurance

benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D) was legally adopted by such individual before the end of the 24-month period beginning with the month after the month in which such individual most recently became entitled to disability insurance benefits, but only if—

(i) proceedings for such adoption of the child had been instituted by such individual in or before the month in which began the period of disability of such individual which still exists at the time of such adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or

(ii) such adopted child was living with such individual in such month; or

(E) was legally adopted by such individual—

(i) in an adoption which took place under the supervision of a public or private child-placement agency,

(ii) in an adoption decreed by a court of competent jurisdiction within the United States,

(iii) on a date immediately preceding which such individual had continuously resided for not less than one year within the United States;

(iv) at a time prior to the attainment of age 18 by such child.

* * *"

It will be seen, as discussed hereinafter, that claimant's adoption of the child, Linda Gail Morris, was carried out under the auspices of, and pursuant to the direction and control of, the Juvenile Court for Raleigh County, West Virginia, which public institution would seem to be within a generic definition of "public child-placement agency," within the meaning of subparagraph (E) of the aforesaid Section 202(d)(8); a juvenile court, in general, as well as in West Virginia, is definitely in the child "placement" business (in fact, "placement"—such as in foster homes, with potential adoptive parents, etc.—is one of the main functions of a typical juvenile court), such court being clearly a public entity, beyond any doubt.

The undisputed facts in the case, from a careful review of the entire documentary evidence of record (Exhibits 1 through 12), show that the child, Linda G. Morris, was born March 7, 1965, and that she has been continuously in the uninterrupted custody of the claimant-wage earner since November 29, 1965 (Exhibit 1, page 2, indicating that such child lived with the wage earner actually from October 1965), and was adopted by the claimant-wage earner and his wife, by adoption decree entered October 13, 1966 (Exhibit 12, a certified copy of the adoption decree entered by the Juvenile Court of Raleigh County, West Virginia); that applications for child's insurance benefits were filed, on behalf of Linda G. Morris, on October 22, 1966, and February 28, 1968 (Exhibits 1 and 5), it being clear that the child was under age 18 at both of such times, and was in the custody of the wage earner at the time such applications were filed (Exhibit 12); that the child has been supported by the claimant-wage earner since her birth, March 7, 1965 (see Exhibit 3); that the child is still under age 18 (presently being only 3 years of age) and is, of course, unmarried, within the requirements of Section 202(d)(1)(B), noted hereinbefore; that the child, Linda G. Morris, meets the definition of "child" contained in Section 216(e) of the Social Security Act, because she is the legally adopted child of the claimant-wage earner who is the natural grandfather of the child, Linda G. Morris (Exhibit 12; Exhibit 1); and, further, that the claimant-wage earner, Marion P. Morris, is a living disability insurance benefit recipient pursuant to the Social Security Act, having received such

benefits for the month of July, 1957, and thereafter (Exhibit 8, page 2).

It is consequently seen that the entitlement provisions of Section 202(d)(1) are clearly met in this case, in that Linda G. Morris is the child of the individual wage earner, Marion P. Morris, (i.e. within the definition of "child" in Section 216(e), the fact of the child's adoption comporting with such definition), such wage earner being entitled to disability insurance benefits; that a valid child's insurance benefit application was filed, and that the other requirements of Section 202(d)(1) are met, including the dependency, at the time both applications were filed, of such child upon the claimant-wage earner (i.e., the child was dependent upon Marion P. Morris within the meaning of 202(d)(1)(C)(i), as aforesaid). The child and the claimant-wage earner having met all the requirements of the aforesaid provision, accordingly, should have been entitled to child's insurance benefits by virtue of the first application, noted hereinbefore, and even more particularly because the "deemed dependency" requirements of Section 202(d)(3) were also met at such time, in view of the fact that the child was living with the wage earner, her adoptive father, at the time such child's application was filed within the clear meaning and intent of the "deemed dependency" provision of Section 202(d)(3). (Moreover the child has been *actually* dependent upon such wage-earner, so that such "deemed dependency" provision may not be needed at all for entitlement.) These two provisions alone, i.e., paragraphs (1) subparagraph (C) clause (i), and paragraph (3), of Section 202(d), both being clearly met, should easily constitute sufficient bases for entitlement to Social Security benefits for the child, Linda G. Morris, on the basis of the wage record of her claimant adoptive father, Marion P. Morris.

Apparently, the Social Security Administration components responsible for the prior denial determinations in connection with the first application construed the provision of Section 202(d)(1)(c)(iii) as exclusively controlling, thereby precluding entitlement to benefits; those components responsible for making the denial determinations on the second application (filed after the new amendments were enacted in early 1968) additionally construed the pro-

visions of what is embodied in present Section 202(d)(8)(E) as also defeating entitlement in this case.

As seen, the provisions discussed hereinbefore may well have provided an adequate basis for entitlement in this case earlier. Section 202(d)(8), for want of a better term, is a "deemed not dependent" provision which, in view of liberal construction generally required of the Social Security Act, is somewhat anomalous (many court precedents require that conflicting provisions should be construed, where possible, so as to afford entitlement); it, therefore, appears that it is not appropriately used in a case where, as here, two other provisions which clearly appear to have been met will afford entitlement (viz., Sections 202(d)(1)(C)(i) and 202(d)(3)). The court cases are too numerous to require citation of the tenet that there should be a liberal construction of the Social Security Act, and where particular provisions conflict, a construction favoring coverage (rather than defeating entitlement) should prevail.

Even if the above provisions (Section 202(d)(1)(C)(i) and 202(d)(3)), which are literally met by the facts of the instant case, were not in fact controlling, it would appear that newly-enacted clause (i), subparagraph (E), paragraph (8) of Section 202(d), provided by the Social Security Amendments of 1967 (signed into law in January 1968) would—in and of itself—afford sufficient basis for entitlement in this case. Such provision, set out hereinbefore, provides that an adopted child of a wage earner whose adoption occurred after the wage earner's entitlement to disability insurance benefits, shall be deemed "not to meet" the requirements of clause (i) or (iii) of paragraph (1)(C) of Section 202(d) *unless* such child: "* * * (E) was legally adopted by such individual [such as the claimant-wage earner herein]—(i) in an adoption which took place under the supervision of a public or private child placement agency * * *" (emphasis supplied). It clearly appears that the functions of the court of competent adoption jurisdiction in this case (i.e., the Juvenile Court) are in fact literally within the ambit of the definition of the term "public * * * child placement agency." Other provisions of subparagraph (E) of the foregoing provisions, i.e., requiring residency within the United States for not less than one year, etc., appear to have been met in this

case, in view of the evidence of record and the antecedent evaluation thereof.

That a juvenile court, as such courts are constituted generally throughout the United States, and particularly in West Virginia, may appropriately be viewed as coming within the definition of "public child-placement agency" can hardly be gainsaid. It is definitely a public agency, one of the principal functions of which is the "placement" of children in various appropriate environmental settings, including temporary and permanent custody, in foster homes, etc.

In respect to the jurisdiction of juvenile courts in West Virginia—as is the case of most other states—such court takes full supervisory authority over the child, often placing him in a foster home (the adults therein sometimes being prospective adoptive parents); under the immediate supervision and/or custody of a suitable individual; or in some other environmental setting deemed to be in the best interests of the child. In a truly literal sense then, the court, a public entity, is extensively involved in *child placement*, proper environmental placement being one of the prime functions of such a court in our modern society under the doctrine of *parens patriae* (i.e., the State acting in place of the parents). It is noteworthy that the *1966 Official Code of West Virginia*, Chapter 49, Article 5, Section 4, provides that "A person under the age of 18 years who appears before the juvenile court *in any capacity* shall be deemed to be a ward of the court and, protected accordingly * * *" (emphasis added).

It is believed to be a reasonable conclusion that the use by the Juvenile Court, in the present case, of the town official for investigative and supervision purposes (in addition to the Court's own supervision) is not inconsistent with the aforesaid meaning of the phrase "public child-placement agency" (per Section 202(d)(8)(E)).

Juvenile courts in general have a direct jurisdictional responsibility and supervision, just as is the case of such courts in the State of West Virginia, of dependent, neglected, or delinquent children (the juvenile court has jurisdiction of children up to the age of 18 in West Virginia). Although subparagraph (E), newly enacted by the 1967 Amendments, would appear to refer to the more orthodox type of "public child placement agency," never-

theless, the juvenile court—particularly where it determines custody (as was determined in its order in this case) —is certainly a form of public entity extensively involved in the placement of numerous children; hence, is in the "placement" business, and is clearly an agency of the public. It is consequently believed, therefore, that a liberal and reasonable interpretation of the Act would certainly result in the conclusion that a juvenile court (having one of the most comprehensive types of jurisdiction over the youthful individual, compared with other types of courts in this country), is substantially within the ambit of a generic definition of "public child placement agency." The fact that the second requirement of subparagraph (E) may be somewhat repetitive, where the foregoing is held to be the case, is of no moment here.

Although the claimant (in Exhibit 5, page 4) stated that his adoption of the child "was not supervised by a public or private child placement agency," this assertion on his part is not controlling, in view of the foregoing; the determination in such regard is in the nature of a legal conclusion which is properly within the province of the Hearing Examiner herein (moreover, it would appear that Exhibit 5, claimant's second application, was not in fact filled in by him in view of the handwriting differences contained therein, claimant's signature evincing a rather "nervous scrawl" compared to the factual information contained in the body of such exhibit).

In view of the fact of claimant's case being within the purview of Section 202(d)(1)(C)(i) and 202(d)(3) of the Act, even in respect to the earlier application, and in view of the total evidence of record—including that more recently adduced—the determinations in connection with claimant's first application are hereby reopened by the undersigned Hearing Examiner. 20 C.F.R. 404, 908, 916, 957, 958.

There possibly could have been a valid equitable adoption existing in the instant case (within the meaning of the doctrine announced by the U. S. District Court for the Southern District of West Virginia in its decision, issued in 1965, of *Davis* v. *Celebrezze*, 239 F. Supp. 608; however, in view of the fact that the Hearing Examiner finds that entitlement herein is clearly warranted under the provisions of Section 202(d)(1)(C)(i); 202(d)(3); and 202(d)

(8)(E), hereinbefore noted, no testimonial-type hearing appears necessary in this case, in respect to such factor).

Based upon a careful evaluation of all evidence of record, including the functions of the juvenile court, herein officially noticed, it is the finding of the undersigned Hearing Examiner that the instant case clearly meets the entitlement requirements of Section 202(d)(1)(c)(i) and 202(d)(3) of the Social Security Act, as amended, and it is found that the provisions of Section 202(d)(8) do not operate to defeat entitlement in this case or to warrant a conclusion that the child is deemed not to be dependent upon the adoptive father, the claimant-wage earner herein. It is found that all necessary factors of entitlement, pursuant to the specifically-cited provisions of the Social Security Act, including those provided in the Social Security Amendments of 1967, are met in this case.

It is, consequently, the decision of the undersigned Hearing Examiner that the claimant wage-earner, Marion P. Morris, on behalf of the child, Linda Gail Morris, pursuant to the aforesaid applications for child's insurance benefits filed on October 22, 1966 and February 28, 1968, is entitled to child's insurance benefits in accordance with the provisions of Section 202(d) of the Social Security Act, as amended.

/s/ Paul R. Stone
PAUL R. STONE, *Hearing Examiner*
1019 Federal Building
500 Quarrier Street
Charleston, West Virginia 25301

Date: Sept. 20, 1968

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

ORDER OF APPEALS COUNCIL

Remanding Case of Hearing Examiner for Additional Action

In the case of	Claim for
Marion P. Morris o/b/o Linda G. Morris (*Claimant*) Marion P. Morris (*Wage Earner*)	Child's Insurance Benefits 232-18-6710 (*Social Security Account Number*)

This case is before the Appeals Council on its own motion to review the hearing examiner's decision issued on September 20, 1968.

On consideration of this case, it appears to the Appeals Council that the hearing examiner's findings on relevant facts concerning the dependency of the minor claimant upon the wage earner are not adequately supported by the record. It further appears that the hearing examiner's decision was issued without holding a hearing.

Accordingly, the Appeals Council hereby remands the case for necessary action by a hearing examiner. The hearing examiner will schedule a hearing and give reasonable notice to the claimant of the time and place thereof, the issues to be determined, and the questions of fact upon which findings will be made. He will provide ample opportunity for the claimant to examine the evidence to be received into the record, and to propose findings of fact and conclusions of law, as well as reasons in support thereof. Upon completion of the hearing record, the hearing examiner will issue a revised decision, with notice to the claimant of the right to request review thereof by the Appeals Council.

APPEALS COUNCIL

/s/ Irving Trager
IRVING TRAGER, *Member*
Lucille V. Covey
LUCILLE V. COVEY, *Member*

Date: Jan. 3, 1969

CRIMINAL COURT OF RALEIGH COUNTY

BECKLEY, WEST VIRGINIA

Harry L. McCreery
Judge

January 30, 1969

P. W. Hendricks, Attorney-at-Law,
227 State Street,
Madison, West Virginia

Dear Mr. Hendricks:

I have your letter with reference to information regarding the adoption of one, Linda Gail Morris.

Adoption Order Book 9 at page 69, dated October 13, 1966, shows that the Court requested Joe Asbury, Town Policeman for the town of Whitesville, to make investigation in this case, and he did so, reporting favorably. So far as the order shows an investigation was not made by the Child Welfare Department.

I hope this supplies the information that you want.

With kindest regards, I am

Very truly yours,

/s/ Harry L. McCreery,
HARRY L. MCCREERY,
Judge Criminal Court.

EXCERPTS FROM TRANSCRIPT, HEARING BEFORE PAUL R. STONE, HEARING EXAMINER, FEBRUARY 6, 1969, pp. 7-13; 18-21; 25-26

• • • • •

[7] HEARING EXAMINER: I will take notice of the fact that the so called criminal court of Raleigh County is also the juvenile court and it is entirely different from the circuit court of Raleigh County, even though they both have concurrent jurisdiction of adoption proceedings. Do you have any additional documents other than the certification by the authorities in Raleigh County as to the lack of a child placement agency there to be introduced at this time Mr. Hendricks?

MR. HENDRICKS: No, I just have this to say—that in some of the larger counties like Cabell and like Kanawha, they have created further courts which deal with nothing but what we call divorces and adoptions. It is called the Domestic Relations Court here in Kanawha County, and they have the facilities with which to make investigations and they have a department of welfare to make an investigation and then they have their own investigators but in a rural county like Raleigh and Boone and many others, they don't have these facilities, they are not available, this man couldn't have come to Kanawha County and adopted this child because the statute clearly says it must be in the county where he resides, and for this reason he is following the statute that the legislature set up and they had this in mind when they changed the law to permit a competent and discrete person to make this report to the [8] court. There must be a report made in every adoption case and this case had its Chief of Police, a man that I'm sure the court knew to be a good man and I know personally he made the investigation, and making his report to the court, and that is the only way they can do it in those counties. In other words, he employed counsel, he did everything that a person can do in this state to make this a valid adoption. It wasn't anything else that he could do, nothing else that any lawyer could do because they complied with the statute.

HEARING EXAMINER: Do you want to consider that as a part of your oral argument, at least a sort of a preliminary oral argument in this case.

MR. HENDRICKS: Yes sir. The statement I made was to ask the Examiner to take judicial notice of these facts because they are so well known to especially members of the Bar.

HEARING EXAMINER: Do you want to amplify that particular contention towards the close of the hearing? Of course, you have the privilege of doing so Mr. Hendricks.

MR. HENDRICKS: All right.

HEARING EXAMINER: At this point I want to briefly review the history of this claim up to the present time and to summarize the basic issues for decision in the case. The record shows that on October 22, 1966, the claimant Marion P. Morris filed with the Social Security Administration, an application for childs insurance benefits on behalf of his adopted daughter, Linda Gail [9] Morris, based on the claimant's wage record as a disabled wage earner who has been receiving disability benefits under the Social Security Act since July 1957. Such application for childs insurance benefits was denied on November 14, 1966. On April 5, 1967, the claimant requested reconsideration. However, pursuant to such reconsideration the aforesaid denial was affirmed, and the claimant was so notified by letter dated May 10, 1967. No further action was taken on such application. The record additionally shows that on February 28, 1968, the claimant filed another application with the Social Security Administration for childs insurance benefits on behalf of Linda Gail Morris. Such application was denied March 15, 1968, on the basis that adoption of the child was not supervised by a public or private child placement agency as required by Section 202(d)(8)(e) of the Social Security Act. The claimant thereupon requested reconsideration of such determination pursuant to such reconsideration, however, the aforesaid denial was affirmed and the claimant was so notified by letter dated June 28, 1968. Being dissatisfied with this determination on July 16, 1968, the claimant requested a hearing before a Hearing Examiner of the Social Security Administration. As noted heretofore, a formal hearing was not held at such time the Hearing Examiner issuing a favorable decision on the record under date of September 20, 1968, and in that the claimant was entitled to childs insurance benefits on behalf of [10] of Linda Gail Morris. However, by order dated January 3, 1969, this case was remanded by the Appeals

Council in order that a hearing might be held, any additional available evidence received, and it further directed the Hearing Examiner to issue a revised decision. In accordance with the Appeals Council remand order of January 3, 1969, this hearing is now being held before me here in Charleston, West Virginia, on February 6, 1969. Now Mr. Hendricks and Mr. Morris, is what I have said regarding the history of this claim correct?

MR. HENDRICKS: Yes sir.

HEARING EXAMINER: To the best of your knowledge Mr. Morris is that correct?

CLAIMANT: Yes.

HEARING EXAMINER: Mr. Hendricks, the important question to be decided in this case is whether or not the claimant is entitled to childs insurance benefits on behalf of the child Linda Gail Morris, under the provisions of the Social Security Act, as amended. It must be specifically determined whether the child meets the dependency requirement for entitlement to such benefits under Section 202(d) of the Social Security Act, as amended. Mr. Hendricks do you understand the issues for decision in this case sir?

MR. HENDRICKS: Yes, I think so.

HEARING EXAMINER: Mr. Morris would you please rise and raise your right hand and be sworn as a witness?

[11] The claimant, MARION P. MORRIS, having been first duly sworn, testified as follows:

EXAMINATION OF CLAIMANT BY HEARING EXAMINER:

Q. State your full name and address for the record please sir?

A. Whitesville, Marion P. Morris, Box 357, Whitesville, West Virginia.

Q. Are you the same Marion P. Morris who is the claimant and wage earner in these prior proceedings that I have just been describing?

A. Yes sir.

Q. I believe you have been receiving social security disability benefits beginning as of the month of July 1957 and thereafter?

A. Yes sir.

Q. I believe that you were found to be under a disability beginning September 30, 1953, is that correct sir?

A. That's right.

Q. And you have a period of disability since then?

A. Yes sir.

Q. Now what relation is this child Linda Gail Morris to you?

A. Granddaughter.

Q. She is your natural granddaughter?

A. Natural granddaughter.

Q. Now the record indicates that you have legally adopted this child?

[12] A. Yes sir.

Q. I believe that adoption occurred October 13, 1966, is that correct?

A. I believe that's right, I'm not for sure.

Q. Was the child living with you at the time of adoption?

A. Yes sir.

Q. How long had she been living with you prior to the adoption?

A. Prior to the adoption she had been living with me all of her life except about two months.

Q. When was she born sir?

A. March 7, let's see, she'll be four I believe—I'm not certain, she'll be three or four this coming March 7th. I believe it's four. I guess you've got the record there.

Q. The record indicates that she was born March 7, 1965, is that correct?

A. That's right then.

Q. And she has lived with you all except what—two months of her life?

A. About the first two months of her life. Do you want to know why?

Q. No, that's not necessary.

MR. HENDRICKS: I would like for him to tell why, if you don't mind, if there is any reason why.

[13] Q. Before you answer that let me ask you one additional question. Mr. Morris have you supported this child this whole time, ever since birth with the exception of two months?

A. Yes sir.

Q. She had been dependent on you?

A. Yes sir.

Q. All but the first two months of her life?

A. Yes sir.

Q. And she continues to live with you at the present time?

A. She has.

Q. And at the time of the first application for childs insurance benefits filed October 22, 1966, was she living with you and depending upon you at that time?

A. Yes sir.

Q. And at the time of filing the last application February 28, 1968, was she also dependent on you?

A. Yes sir.

Q. And living in your household?

A. Yes sir, she has been living with me all her life, always.

Q. And you have supported her all of her life except the first two months?

A. Yes sir.

Q. You can proceed to ask questions Mr. Hendricks.

* * * * *

[18] somebody from Boone County do this, it's forty miles from Beckley to Whitesville and he lives right on the edge of Whitesville, so this would be the reason because it is a state agency and that would be the reason why. As a matter of fact——.

Q. Are you saying now Mr. Morris and Mr. Hendricks that some other agency assisted the supervision of these adoption preliminaries?

MR. HENDRICKS: Yes.

Q. Rather than—other than this police officer of Raleigh County?

MR. HENDRICKS: Yes, he's not a police officer, he's a Chief of Police of Whitesville.

A. He was, he isn't now, but let me make this plain, it might help somewhere. He's been Deputy Sheriff for twenty one years to the best of my knowledge and in all cases Judge McCreary used him down there in Clear Fork District as his investigator on things like that. He has made investigations for——.

Q. Are you talking about Joe Asbury?

A. Yes sir.

Q. Well at this juncture I particularly want to know about this other individual from Boone County, as your attorney intimated a representative of the State Depart-

ment of Public Assistance or State Welfare Department as the case may be. What was the name of this other individual who assisted in this preliminary investigation?

[19] A. Skeens, Lester Skeens.

Q. And what agency is he connected with?

A. Welfare and he looked after the children—the child welfare part of it.

Q. In other words he is a representative of the Boone County Child Welfare Department, is that correct?

A. I reckon that's what they call him.

Q. Now you have positive knowledge that he assisted Joe Asbury?

A. I have positive knowledge that he came there and made an investigation.

Q. Even though Joe Asbury signed it? This other individual, Mr. Skeens, actually assisted in supervising the preliminary work in this case?

A. Well they both came there for the same reason. As to whether they ever got together on it or not I don't know. I'm not in a position to answer because I never did talk to Skeens after that.

Q. And you say this is the practice that where you live, where this town—Joe Asbury lived close to the line, that he had assistance from some representative such as Mr. Skeens from the Welfare Department of Boone County?

A. Mr. Skeens came there and asked questions, concerning this adoption before the adoption was made. I suppose that they were together on it, I do not know what they done between themselves.

[20] Q. Well this adoption was actually under the supervisional auspices of more than just a police officer and Raleigh County?

A. Right.

Q. These questions that were asked by Mr. Skeens—was all that prior to October 13, 1966, the time of the adoption decree was this prior to your receiving the adoption decree?

A. Yes.

Q. Who did the bulk of the investigational questioning, was it Mr. Skeens or Mr. Joe Asbury?

A. Well now it would be hard for me to make a positive statement on that as to which one asked the most questions, or what, but they both did come there and make an investigation concerning.

Q. Mr. Hendricks, you indicated prior to the commencement of the hearing that you wanted to get an additional exhibit, as I gather, to show that there is no child placement agency in Raleigh County and I presume you are going to get that from Judge McCreary you said?

A. Yes.

MR. HENDRICKS: Yes.

Q. Well in addition to that, in view of the testimony here, I would like for you if you can to procure a notarized statement from this individual Mr. Skeens—who has been testified is a representative of the Boone County Welfare Department giving his official position and the extent to which if any, he participated in [21] or supervised any of the preliminary steps necessary prior to the issuance of this adoption decree. The record is scant in connection with such point, and I would like for it to be developed as fully as possible so that an intelligent decision can be made in this case.

Q. We will take a short recess. Back on the record. Mr. Morris there is a statement here, in exhibit 5, in connection with the application for childs insurance benefits, on the last page of that application, a statement to the effect that "the adoption was not supervised by a public or private child placement agency," and you signed this statement. Was that the case, I mean is that your opinion, that this adoption was not supervised or what is the situation about that?

A. I was thinking I guess—I don't remember specifically —but——.

Q. Sir?

A. I don't remember.

Q. Well I want to be a little more specific about this application form here, exhibit 5. Your signature here looks like it is written in a nervous scrawl to me, did somebody else fill out the body of the application for you and you merely signed it?

A. Can I see the signature?

Q. Yes sir. I probably ought to ask you is that your signature there—(indicating)?

A. Yes.

* * * * *

[25] what she said, I suppose that he would have a record of all that.

Q. And he stayed on there continuing to question your wife after you left?

A. Yes, he stayed there quite a while after I left.

Q. And what agency did you say he was connected with?

A. The Public Welfare, Child Welfare of the DPA, isn't that right?

Q. Of what county?

A. Boone.

Q. Boone County.

A. First, I don't guess this could go on record, but first——.

Q. Well if you want to have a conference with your attorney as to whether it should or should not go on the record, you are at liberty to do so. Mrs. Means is taking down everything.

MR. HENDRICKS: Go ahead.

A. Well at first Don asked me, said "where do you want this done at, in Raleigh or Boone?" I said "well I think Raleigh, because I live in Raleigh." He said "I was fixing to have it in Boone County," and I said "no," I said "Raleigh County" because I live just over the county line.

MR. HENDRICKS: You live about 100 yards from the county line?

A. Less than that—about 200 and some feet, because it was measured for us.

[26] Q. So your understanding was that the law as Mr. Hendricks has given us, referenced to here today, the fact that you had to get this adoption cleared up in Raleigh County?

A. That's right. That was right, that was why I told Don——.

Q. As far as you know this Mr. Lester Skeens, of the Welfare Department is more or less assisting in carrying this out because of the fact that you live so near Boone County, is that right?

A. Yes, that's the way I take it.

Q. Well as I indicated Mr. Hendricks, I would like to have a notorized statement from Mr. Lester Skeens as to the extent of his participation in this matter and in what official capacity he acted, if any, and I would like

for that to be in affidavit form, and if there are any other officials over there in Boone County or Raleigh County that have any personal knowledge of this matter, you are at liberty to get affidavits from them too. If you meet with any resistance in attempting to secure these affidavits, I would appreciate it if you would let me know and I will try to be of some aid in securing these if, in fact, there are individuals there that have personal knowledge of this matter.

MR. HENDRICKS: All right.

Q. Do you want to ask the claimant any additional qestions?

MR. HENDRICKS: No sir, I believe you have covered it real good.

Q. Now do you want to make any additional oral argument at this time or do you want—would you like to file a written brief on any

* * * * *

CRIMINAL COURT OF RALEIGH COUNTY
BECKLEY, WEST VIRGINIA

Harry L. McCreery
Judge

February 7, 1969.

P. W. Hendricks, Attorney-at-Law,
227 State Street,
Madison, West Virginia.

Dear Mr. Hendricks:

I have your letter requesting information as to whether or not Raleigh County has a public or private placement center or agency for children.

Raleigh County does not have a public or private placement center or agency for children.

Very truly yours,

/s/ Harry L. McCreery
HARRY L. MCCREERY,
Judge Criminal and Juvenile Courts.

WEST VIRGINIA
DEPARTMENT OF WELFARE

District Office No. 7

325 State Street
Madison, West Virginia 25130
March 3, 1969

Mr. P. W. Hendricks, Attorney at Law
State Street
Madison, West Virginia 25130

Re: Mr. and Mrs. Marion P. Morris
Granddaughter—Gail Kinder

Dear Mr. Hendricks:

In response to your request for a statement concerning the above-named persons, I offer the following:

I visited in the home of Mr. and Mrs. Morris on August 25, 1967, for the purpose of preparing a divorce and custody investigation for the Court of Common Pleas of the County of Cuyanoga, Cleveland, Ohio.

I found the home to be very suitable for the above-named child, and my observation was that the child was physically and emotionally healthy. I recommended that the grandparents be given full custody of Gail. I would also recommend that this home be approved as an adoptive home for Gail.

Yours truly,

/s/ Leslie M. Skeens
LESLIE M. SKEENS
Social Worker II
Boone County

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

HEARING EXAMINER'S DECISION

In the case of	Claim for
Marion P. Morris o/b/o Linda Gail Morris (*Claimant*) Marion P. Morris (*Wage Earner*)	Child Insurance Benefits 232-18-6710 (*Social Security Account Number*)

This case is before the undersigned Hearing Examiner upon a remand thereof by the Appeals Council, Social Security Administration, dated January 3, 1969, for the purpose of holding a hearing and issuing a revised decision. The Hearing Examiner had previously issued a favorable decision in this case, without deeming it necessary to hold a hearing.

The principal issues are as stated in the Hearing Examiner's decision of September 20, 1968, which is hereby referred to, the provisions of which are hereby incorporated by reference (except to the extent inconsistent herewith).

Hearing was duly held on February 6, 1969, by the undersigned in Charleston, West Virginia. The claimant was personally present at the hearing and gave oral testimony in his own behalf. Mr. P. W. Hendricks, an attorney at law of Madison, West Virginia, appeared at the hearing and represents the claimant.

As suggested by the Appeals Council, there may well have been error in determining entitlement on the basis of claimant's first application for child's insurance benefits; in view of the fact that present policy is to the effect that administrative res judicata obtains where there is no new and material evidence presented within four years of the initial determination on a particular issue (and the provisions providing for an apparently less-stringent standard in child's adoption cases where the adoption is under the auspices of a public or private child placement agency not having been enacted until the 1967 Social Se-

curity Amendments were signed into law in January, 1968), the Hearing Examiner's prior reopening of claimant's first application (of October 22, 1966) and the determinations thereupon, is hereby set aside. The prior decision of September 20, 1968, is accordingly revised in consonance herewith, to show non-entitlement on the basis of claimant's first application. 20 C.F.R. 404.957, 958.

At the hearing, claimant testified that the child, Linda Gail Morris, born March 7, 1965, was supported and cared for by him continuously from the period shortly after such child's birth. Claimant received monthly Social Security disability benefits for the period beginning with the month of July, 1957. The child, Linda, was adopted by claimant and his wife (who are the natural grandparents of the child) on October 13, 1966. As previously found by the Hearing Examiner, Linda was being supported by the claimant at the time such child's application was filed, living with such claimant (the wage earner) at such time, and thus comported with the requirement of Sections 202 (d)(1)(C)(i) and 202(d)(3) of the Social Security Act.

Section 202(d)(8)(E) also provides, in effect, that if an adoption takes place under the supervision of a public or private child placement agency, certain other provisions of the Act which may augur against entitlement would not preclude entitlement. It was additionally found by the Hearing Examiner that the Juvenile Court of Raleigh County, West Virginia (the court which decreed the adoption in the instant case) partakes of the character of a "public child placement agency" and, therefore, sufficiently constitutes such an agency or entity (from a generic and hence, literal, standpoint), for such purpose.

The foregoing facts were obvious from the documentary evidence of record without a hearing; however, at the hearing, claimant intimated that an official of a neighboring county may have aided in the investigation work preliminary to the Raleigh County Juvenile Court's issuance of the adoption decree (this was checked out, and found not to have been the case—see Exhibit 17).

Pertinent provisions of the Social Security Act in this case are Sections 216(e); 202(d)(1)(C)(i); 202(d)(3); 202(d)(1)(C)(iii); and 202(d)(8). As noted in the prior decision, the Hearing Examiner found that claimant's case

comported with the requirements of Sections 202(d)(1)(C)(i), 202(d)(3), and 202(d)(8)(E) of the Act, sufficient for entitlement purposes, irrespective of the seemingly countervailing nature of Section 202(d)(1)(C)(iii), on the principal basis that a liberal (or even literal) construction of the Act (in favor of coverage, rather than against it) clearly augurs in favor of such result.

In respect to claimant's second application, moreover, additional evidence was presented, and contentions made, which further strengthened the prior quasi-adjudicative disposition by the Hearing Examiner on such matter. It appears, from additional evidence presented at and after the hearing, that there is no public or private child placement agency in Raleigh County, West Virginia (the county in which any adoption action must necessarily be brought). See Exhibits 13 through 18. Hence, the attorney, Mr. Hendricks, makes the point that it would be unlawfully discriminatory (even a violation of the Federal constitutional equal protection of the laws concept, he urges) for benefits to be payable for children in particular counties of the United States where the orthodox type of child placement agency, either public or private, is in existence as an available adjunct to an adoption court, on the one hand, and for children to be deprived of such Federal benefits simply because there is not such an agency available in the only place in which a petition for adoption can properly be brought, on the other. At the very least, this point not only tends to further buttress the prior holding as to the juvenile court being a child placement agency (which type of court decreed the adoption in the instant case) as legally proper (such a court is within a generic definition of the term "public child placement agency," its functions being mostly *placement* in nature, whether the subject be a juvenile delinquent, or a neglected or dependent child), but is an absolute necessity in the instant case if invidious discrimination is to be avoided in attempting to apply the 1968 Federal enactment in as uniform and fair way as possible. The Hearing Examiner's own independent research indicates that, although the concept of equal protection is generally thought to be a prohibition on state action, the equivalent thereof is available as a proscription against discriminatory treatment at the Federal level. See *Bolling* v. *Sharpe*, 347 U. S. 497 (1954).

In accordance with the reasoning contained in the Hearing Examiner's prior decision of September 20, 1968, as further augmented by the fact that discriminatory treatment against the child and the claimant wage earner is urged as a consequence if such were not again followed, it is the decision of the undersigned Hearing Examiner—based on findings heretofore made in the prior decision, as well as upon more recent considerations, that the claimant, Marion P. Morris (on behalf of the child, Linda Gail Morris), pursuant to application filed February 28, 1968, is entitled to child's insurance benefits under Section 202 (d), and in consonance with Section 216(e), of the Social Security Act, as amended. It is the further decision of the Hearing Examiner that the prior decision of September 20, 1968, is hereby revised in accordance with the foregoing.

/s/ Paul R. Stone
PAUL R. STONE, *Hearing Examiner*
Room 1019, Federal Building
500 Quarrier Street
Bureau of Hearings & Appeals
Charleston, West Virginia 25301

Date: Mar. 18, 1969

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

DECISION OF APPEALS COUNCIL

In the case of	Claim for
Marion P. Morris o/b/o Linda G. Morris (*Claimant*)	Child's Insurance Benefits 232-18-6710 (*Social Security Account Number*)
Marion P. Morris (*Wage Earner*)	

This case is before the Appeals Council on its own motion to review the decision of the hearing examiner rendered on March 18, 1969, on the claimant-wage earner's claim on behalf of Linda G. Morris (the child) for child's insurance benefits under title II of the Social Security Act, as amended. The claimant and his attorney were notified of this action on April 16, 1969, and were apprised of their rights with respect thereto.

In his decision, the hearing examiner held that the child was entitled to child's insurance benefits pursuant to the application filed on her behalf on February 28, 1968.

The hearing examiner's statements with respect to the pertinent provisions of the Social Security Act, as amended, Social Security Administration Regulations No. 4, and the evidentiary facts before him are incorporated herein by reference and supplemented as hereinafter indicated. However, the Appeals Council does not adopt the inferences, findings, or conclusions of the hearing examiner.

The primary issue before the Appeals Council is whether the claimant is entitled to child's insurance benefits on behalf of Linda G. Morris. This determination rests upon the specific issues of whether the child meets the dependency requirements for an adopted child, or in the alternative, whether she may be considered a child of the wage earner at one of the required times when she did meet the dependency requirements.

The essential facts in this case are not in dispute and show that the wage earner, who was born on November 28,

1905, filed application for a period of disability and disability insurance benefits on June 25, 1957, and was found entitled to a period of disability beginning with September 30, 1953, and to disability insurance benefits effective with July 1957. On October 22, 1966, he filed an application for child's insurance benefits on behalf of Linda, his grandchild, who was born on March 7, 1965, and was legally adopted by the wage earner on October 13, 1966. This application was disallowed by the Administration because Linda had not been born or adopted within the 24 month period following the wage earner's entitlement to disability insurance benefits. The claimant's request for a hearing was filed too late and was accordingly dismissed by the hearing examiner and a request for review of this action was denied by the Appeals Council on June 13, 1968.

However, a second application was filed on behalf of Linda on February 28, 1968 for consideration of the case under the 1967 Amendments to the Social Security Act. This application was also disallowed by the Administration because Linda's adoption had not been supervised by a public or private child-placement agency. Upon a request for hearing, the hearing examiner, without holding a hearing, issued a decision on September 20, 1968 which held that Linda was entitled to child's insurance benefits under the law as it existed prior to the 1967 Amendments as well as under the provisions of the 1967 Amendments. The Appeals Council decided to review this decision on its own motion, and by an order dated January 3, 1969, remanded the case to a hearing examiner to hold a hearing and issue a decision. Pursuant to this order, a hearing was held and a decision was issued on March 18, 1969 which held that although Linda was not entitled to child's insurance benefits under the law as it existed prior to the 1967 Amendments, she was entitled to said benefits under the provisions of the 1967 Amendments.

The Appeals Council will first consider the question of Linda's entitlement under the law as it existed prior to the 1967 Amendments to the Social Security Act.

Section 202(d)(1) of the Social Security Act (42 USCA 402(d)(1)), provided, in pertinent part, that every child of an entitled individual is entitled to child's insurance benefits if, among other requirements, he was dependent

upon such individual at the time the child's application was filed or, in the case of an individual entitled to disability insurance benefits, at the beginning of such period of disability or at the time he became entitled to such benefits.

Section 202(d)(9) of the Act (42 USCA 402(d)(9)), provided in pertinent part, that in the case of an individual entitled to disability insurance benefits, a child of such individual adopted after such individual became entitled to such disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child is the natural child or stepchild of such individual, or was legally adopted by such individual before the end of the 24-month period beginning with the month after the month in which such individual r st recently became entitled to disability insurance benefits.

The intent and application of section 202(d)(9) were discussed in a Social Security Ruling (SSR 66-14). It was explained that Congress intended to limit sections 202 (d)(1) and 202(d)(3) in the case of children adopted after a wage earner's entitlement to benefits. The ruling holds that an adopted child who is not a natural child or stepchild is deemed not dependent at the time his application is filed unless his adoption took place within the required 24-month period.

In applying the Act to the instant case, the evidence showed that Linda was not in existence either at the beginning of the wage earner's period of disability or at the time of his entitlement to disability insurance benefits. Hence, she was not dependent on the wage earner at either of these times. The only remaining point of time at which she could be dependent is the time her application was filed, but she is deemed not dependent at this time by the express terms of section 202(d)(9), because her legal adoption was not accomplished within the required 24-month period. Accordingly, Linda was not dependent upon the wage earner, and was not entitled to child's insurance benefits under the Social Security Act in effect prior to the 1967 Amendments, and the Appeals Council so finds.

The 1967 Amendments to the Social Security Act added an alternative to the 24-month requirement in section 202

(d)(9) (presently section 202(d)(8)) in the form of subparagraph (E) which provides that a child may be deemed dependent if such child was legally adopted "in an adoption which took place under the supervision of a public or private child-placement agency."

The evidence herein shows that the adoption of Linda was pursuant to a petition filed in the Juvenile Court of Raleigh County, West Virginia on October 13, 1966, by the wage earner and his wife, which moved that the Judge of said Court file such petition and refer the matter to Joe Asbury, a town Policeman, for investigation and report. On the same day, the matter came on for hearing, Mr. Asbury filed his report, and the Court found the petition true, that Linda was the grandchild of the petitioners, that no other interested parties were present, and thereupon decreed the adoption (Exhibit 12).

In deciding whether the Juvenile Court was a public child-placement agency, the hearing examiner discussed the fact that there is no other public child-placement agency in Raleigh County, West Virginia, the County in which the adoption action must necessarily have been brought. The argument was advanced that it would be discriminatory to hold that Linda's adoption did not comply with the provisions of the statute inasmuch as there was no orthodox child-placement agency available. The hearing examiner was of the further opinion that the Juvenile Court fell within a generic definition of the term "child-placement agency" since its functions were mostly placement in nature. Finally, the hearing examiner felt compelled to find that the Juvenile Court was a public child-placement agency to comply with the constitutional concept of equal protection of the laws. For these reasons, the ultimate conclusion of the hearing examiner was that the Juvenile Court was a public child-placement agency within the meaning of section 202(d)(8)(E).

The conclusion of the hearing examiner is in direct conflict with the express terms of section 404.323 of the Social Security Administration Regulations No. 4 (20 CFR 404.323) which states in pertinent part as follows:

> "For the purposes of paragraph (a)(5)(iii) of this section, the term 'public child-placement agency' means any governmental agency authorized by a state *** to

> place children in a private home for adoption. The term does not include a court; it also does not include a court investigator, juvenile officer, probation officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption."

The clear and unambiguous terms of the regulation are conclusive that the Juvenile Court does not meet the definition of a "public child-placement agency."

Furthermore, it is equally clear that the court appointed investigator in this case, Joe Asbury, does not qualify since as a town policeman he had no authority to place children in private homes for adoption.

A situation analogous to the one presented here is discussed in a Social Security Ruling (SSR 68-55). The adoption in that case was supervised by the Probate Court of X County, Ohio who appointed an investigator who made the required investigation and report. The investigator was not associated with a child-placement agency and there was no certified agency or board in X County, Ohio, which could supervise adoptions. In holding that the adoption did not comply with section 202(d)(8)(E) the ruling stated:

> "That section requires that the legal adoption of a child by an individual already entitled to disability benefits take place under the supervision of a public or private child-placement agency. The rule is a Federal one, operative without regard to the law of any particular State, and requires actual supervision of the adoptee's placement by a recognized placement agency."

The undisputed evidence herein shows that neither the Juvenile Court nor the court investigator exercised any supervision over the placement of Linda in the home of the wage earner.

For the foregoing reasons, the Appeals Council hereby finds that Linda's adoption was not accomplished under the supervision of a public or private child-placement agency as required by section 202(d)(8)(E) of the Act, as amended.

With regard to the issue raised concerning the constitu-

tionality of section 202(d)(8)(E), neither the hearing examiner nor the Appeals Council has the authority to consider or rule upon the constitutionality of any provision of the Social Security Act, and any comment upon this issue would be inappropriate.

The Appeals Council is constrained to comment on one further aspect of this case. The initial decision of the hearing examiner issued on September 20, 1968, made reference to the fact that Linda could possibly have been equitably adopted by the wage earner under the doctrine set forth in *Davis* v. *Celebrezze,* 239 F. Supp. 608. No attempt was made to secure evidence in this regard because entitlement was sustained on other grounds. The record discloses only that Linda was the illegitimate child of the wage earner's daughter and that she was in the uninterrupted custody of the wage earner since November 29, 1965, at which time she was approximately 8 months old. Even if the evidence did establish a valid contract to adopt, i.e., an "equitable adoption," as of November 29, 1965, the date Linda came into the wage earner's custody, such fact would not result in Linda's entitlement since such an "equitable adoption" clearly did not take place within the required time.

Accordingly, it is the decision of the Appeals Council that Linda G. Morris is not entitled to child's insurance benefits for which application on her behalf was filed on February 28, 1968. The decision of the hearing examiner is hereby reversed.

APPEALS COUNCIL

/s/ Irving Trager
IRVING TRAGER, *Member*

/s/ Lucille V. Covey
LUCILLE V. COVEY, *Member*

Date: May 27, 1969

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

MARION P. MORRIS o/b/o LINDA G. MORRIS, PLAINTIFF, v. ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare, DEFENDANT.	Civil Action No. 69-145 CH

MEMORANDUM OPINION

[Filed, Apr. 29, 1971, Clerk's Office, U.S. Dist. Court, So. Dist. of W. Va. JAMES A. McWHORTER, *Clerk*]

This is an action instituted by the petitioner, Marion P. Morris, to review a final decision of the Secretary of Health, Education and Welfare. That decision which was handed down by the Appeals Council on May 27, 1969, is to the effect that Linda G. Morris is not entitled to child's insurance benefits for which application on her behalf was filed on February 28, 1968.

On October 20, 1966, Marion P. Morris filed an application for child's insurance benefits under Title II of the Act on behalf of Linda G. Morris. That application was denied initially and on reconsideration, and the petitioner did not further pursue the matter. On February 28, 1968, the petitioner filed a second application on behalf of Linda G. Morris based on the 1967 amendments to the Act. That application was denied initially and on reconsideration, following which the petitioner requested a hearing. The hearing examiner determined that an oral hearing was not necessary and issued his decision on September 20, 1968, in which he held that Linda G. Morris was entitled to child's insurance benefits on the basis of both the 1966 and 1968 applications. The Appeals Council on its own motion decided to review this decision and subsequently returned the case to the hearing examiner to hold a hearing and receive additional evidence into the record.

The hearing was held on February 6, 1969. On March

18, 1969, the hearing examiner issued a decision in which he held that although the petitioner was not entitled to benefits on behalf of the child based on the 1966 application, he was entitled to such benefits under the 1967 amendments on the application filed in 1968. The Appeals Council reviewed the hearing examiner's decision on its own motion and on May 27, 1969, issued its decision reversing the hearing examiner and holding that petitioner was not entitled to the benefits sought. The decision of the Appeals Council thereby became the final decision of the Secretary.

The case is now before this Court on the Secretary's motion for summary judgment. Under 205(g) of the Act, 42 U.S.C.A. § 405(g), this Court has the power and the duty to review the findings of the Secretary to ascertain if they are supported by substantial evidence, and also to review the validity of regulations prescribed under the Act. Upon this motion, the Court must determine whether the reversal of the hearing examiner's decision by the Appeals Council was supported by substantial evidence and also whether the controlling regulations are valid. *Matczak* v. *Secretary of Health, Education and Welfare*, 299 F. Supp. 409 (E.D. N.Y. 1969).

The essential facts in this case are not in dispute and show that the petitioner filed an application for a period of disability and disability insurance benefits on June 25, 1957, and was found to be entitled to a period of disability beginning September, 1953, and to disability insurance benefits effective July, 1957. On March 7, 1965, plaintiff's daughter gave birth to Linda and shortly thereafter the petitioner and his wife took Linda into their home. Linda is the petitioner's only dependent other than his wife. By Court order dated October 13, 1966, the Juvenile Court of Raleigh County, West Virginia, decreed the adoption of the child by the petitioner and his wife. Prior to the adoption, the case was investigated by a court investigator who returned a favorable report.

Under the 1967 amendments to the Act, it is provided that a child may be deemed dependent if such child was legally adopted in an adoption which took place under the supervision of a public or private child-placement agency, 42 U.S.C.A. § 402(d)(8)(E). Under Social Security Administration Regulation No. 4, section 404.323(c) subsection (1) it is provided:

> "For the purposes of paragraph (a)(5)(iii) of this section, the term 'public child-placement agency' means any governmental agency authorized by a state * * * to place children in a private home for adoption. The term does not include a court; it also does not include a court investigator, juvenile officer, probation officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption."

It would appear to be the Secretary's position that this regulation acts as a barrier to unwise adoptions by Social Security beneficiaries seeking to increase their benefits. The Court is well aware of the practical importance and necessity of such a barrier. However, in the instant case, Linda is the grandchild of the petitioner and his only dependent other than his wife. Furthermore, and most importantly, under West Virginia Law (Code, Chapter 48, Article 4, Section 1) adoption must take place in the county wherein those adopting reside. Accordingly, petitioner and his wife being residents of Raleigh County, the adoption could only take place in Raleigh County. Raleigh County does not, or at least at that time, did not, have a public or private placement center or agency for children. The same is true in many rural counties in this state and probably other states as well.

While the administrative regulations of the Social Security Act are entitled to great weight, they are not controlling. *Kandelin v. Social Security Board*, 136 F.2d 327 (2nd Cir. 1943); *Matczak v. Secretary of Health, Education and Welfare, supra.* Here, we have a situation in which the Secretary's regulations would prohibit Linda and others like her in rural communities in West Virginia from ever qualifying for children's benefits, while their counterparts in larger communities can qualify because in the larger communities the necessary facilities and agencies are available to them. This Court therefore concludes that Social Security Administration Regulation No. 4, Section 404.323(c), Subsection (1), as applied by the Secretary to the facts in this case, is arbitrary, restrictive, unjust and invalid.

Accordingly, the Secretary's motion for summary judg-

ment is denied, and an order granting petitioner child's insurance benefits on behalf of Linda G. Morris will be entered. Counsel may prepare an appropriate order incorporating this opinion by reference therein.

/s/ Illegible
United States District Judge

Dated at Charleston
April 28, 1971

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

MARION P. MORRIS o/b/o LINDA G. MORRIS, PLAINTIFF, v. ELLIOT L. RICHARDSON, Secretary of Health, Education, and Welfare, DEFENDANT.	Civil Action No. 69-145-CH

ORDER

The above-styled action came on before this Court upon motion for summary judgment filed by the defendant, and this cause having been submitted on brief of the defendant and the transcript of the record and all of the proceedings certified to this Court in the manner prescribed by law, and this Court having made its findings of fact and conclusions of law, as appears from the Memorandum Opinion of this Court dated April 28, 1971, which is incorporated by reference herein,

Upon consideration of all of which it is ADJUDGED and ORDERED that the defendant's motion for summary judgment be overruled, and that the final decision of the Secretary be reversed and remanded with directions to grant petitioner child's insurance benefits on behalf of Linda G. Morris, in conformity with the findings of fact and conclusions of law set forth in the Opinion,

And it is further ADJUDGED, ORDERED and DECREED that counsel for defendant shall file with this Court a report stating the benefits to be paid to the plaintiff pursuant to this judgment order, and particularly the amount of the initial payment to be made to the plaintiff and/or any other persons pursuant to this judgment. A copy of such statement of benefits shall be furnished to counsel for the plaintiff who may thereafter file with this Court a petition for the approval and allowance of a fee for services rendered to the plaintiff in this case. No fee shall be paid to or received by the attorney for the plaintiff

other than the amount approved and allowed by this Court pursuant to such petition, and this case shall remain upon the docket for that purpose.

ENTER:

/s/ Illegible
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 71-1757

MARION P. MORRIS o/b/o LINDA G. MORRIS,

APPELLEE,

versus

ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare,

APPELLANT.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston.
John A. Field, Jr., Chief Judge.

(Argued December 6, 1971 Decided January 28, 1972.)

Before BRYAN, WINTER and BUTZNER, Circuit Judges.

Michael Kimmel, Attorney, Department of Justice, (L. Patrick Gray, III, Assistant Attorney General, Walter H. Fleischer, Attorney, Department of Justice, and W. Warren Upton, United States Attorney, on brief) for Appellant, and E. Lee Schlaegel, Jr. (Avis and Schlaegel, on brief) for Appellee.

PER CURIAM:

Plaintiff, a recipient of social security disability benefits since 1957, adopted his granddaughter in 1966 and sought child's insurance benefits for her immediately after the adoption was decreed. His application under the then existing statute was denied because the requirement of the statute that the adoption occur within two years after plaintiff had become entitled to disability benefits was not met. In 1968 the Social Security Amendments of 1967, 81 Stat. 821, became effective, and they extended child's insurance benefits to after-adopted children of disability

beneficiaries regardless of when the adoption took place so long as the other conditions of the statute were met. Plaintiff then submitted a second application for child's insurance benefits. It was denied by the Secretary on the ground that the adoption had not been supervised by a public or private child-placement agency as the statute, as amended, and the Secretary's regulation, required.

Plaintiff sought review in the district court which, noting that under West Virginia law an adoption must take place in the county of residence of the adopting parents and that plaintiff's county of residence did not have a public or private placement center or agency for children, concluded that the Secretary's regulation, defining the term "public child-placement agency" not to include a court, was invalid and ordered child's insurance benefits to be granted. In this appeal by the Secretary, we conclude that the conditions of the statute were not met and that the statute and the regulations were valid. We, therefore, reverse.

— I —

The adoption proceeding was filed in the Criminal Court of Raleigh County (acting as the Juvenile Court of Raleigh County), West Virginia. On the same day that the proceeding was filed, three things occurred: (1) the matter was referred to the Town Policeman for Whitesville, West Virginia, for investigation and report to the court, (2) a hearing was held at which the policeman reported favorably for the adoption, and (3) the adoption was decreed. It is conceded that Raleigh County had no local child-placement agency, public or private, and it is further conceded that West Virginia law requires that adoptions must be decreed in the county where the adoptive parents reside. W.Va.Code § 48-4-[illegible] (1966).

— II —

Prior to the Social Security Amendments of 1967 the adopted child of a recipient of disability benefits was eligible for child's insurance benefits *only* if he was "legally adopted before the end of the 24-month period beginning with the month after the work in which such individual [recipient of disability benefits] became en-

titled to disability insurance benefits." § 202(d)(8)(D) of the Act, 42 U.S.C.A. § 402(d)(8)(D). The 1967 Amendments retained this provision but added, as an alternative ground of qualification, that the child:

> (E) was legally adopted by such individual—
>
> (i) in an adoption which took place under the supervision of a public or private child-placement agency,
>
> (ii) in an adoption decreed by a court of competent jurisdiction within the United States,
>
> (iii) on a date immediately preceding which such individual had continuously resided for not less than one year within the United States;
>
> (iv) at a time prior to the attainment of age 18 by such child.

§ 202(d)(8)(E) of the Act; 42 U.S.C.A. § 402(d)(8)(E).

The Secretary's regulation, 20 C.F.R. § 404.323, implements the statute. In addition to stating the several conditions prescribed by the statute (§ 404.323(a)(5)(iii)), it defines "public child-placement agency" as "any governmental agency authorized by a State . . ., or local governmental agency or component of either to place child in a private home for adoption. The term does not include a court; it also does not include a court investigator, juvenile officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption." (§ 404.323(c)(1))

By the terms of the Act, § 202(d)(8)(E), the after-adopted child of a social security disability insurance recipient, in order to be eligible for child's insurance benefits, must meet at least two conditions. The first is that the adoption took place under the supervision of a public or private child-placement agency, and the second is that the adoption be decreed by a court of competent jurisdiction within the United States. In extending eligibility for child insurance benefits to children beyond those adopted within two years after their adoptive parents became eligible for disability benefits, Congress intended a two-step process to

guard against an abuse of liberalized eligibility by adoptions for the sole purpose of creating eligibility for child insurance benefits. 113 Cong. Rec. 33196-7. By establishing the two separate requirements, Congress evidenced no intention to permit one of the requirements to suffice for the other. This was the conclusion reached in Hagler v. Finch, —— F.2d ——, —— (9 Cir. 1971), where the suitability of grandparents' adoption of their grandchild was investigated only by an adoption examiner, an employee of the court decreeing the adoption, and where it was held that the child was, therefore, ineligible for child insurance benefits under the Act; and we agree. It follows that the Secretary's regulation stating that a court does not constitute a "public child-placement agency" is in accord with the statute and, hence, is valid, and that the adoption in the instant case was not accomplished in a manner which qualifies the child as one eligible to receive child insurance benefits under § 202(d)(8)(E) of the Act or the Secretary's regulation.

We see no denial of equal protection in this case. West Virginia law does permit the West Virginia State Department of Welfare to assume the permanent care, custody and guardianship of any child throughout the state and to consent to the adoption of the child in an adoption proceeding. W.Va.Code § 49-3-1 (1966). Thus, had plaintiff's granddaughter been relinquished by her parents to the Department of Welfare, it could have investigated the suitability of her grandparents as adoptive parents and consented to her adoption by her grandparents in the proceeding in Raleigh County. It cannot, therefore, be argued that the literal provisions of the statute or the regulation could not have been met, and, therefore, that the statute or the regulation discriminates against adopted children in Raleigh County, West Virginia.

For these reasons, the judgment of the district court is

REVERSED.

Albert V. Bryan, Circuit Judge, dissenting:

I would affirm the decision of the District Court on Judge Field's opinion. Morris v. Richardson —— FSupp. —— (S.D.W.Va. April 28, 1971). In the peculiar circumstances here, the regulation seems to me to be unwarrantably restrictive and arbitrary in excluding the adopting court from

the statutory phrase "public child-placement agency". The facts do not justify that interpretation of the statute in order to effectuate its terms.

There was no possibility of abuse of the law because the adoption of this child occurred before the benefits of the legislation were available to her foster parent. Moreover, it was too much to expect of him to anticipate any such infirmity in the child's adoptive status. To require him to seek an out-of-the county agency when the State law demanded that the adoption be accomplished in the county of residence, was also unreasonable. The majority would have the grandfather "relinquish" the child to the State and thereafter endeavor to adopt her. This seems to me to be well beyond the exaction of the statute.

JUDGMENT
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 71-1757

MARION P. MORRIS o/b/o
LINDA G. MORRIS,

APPELLEE,

VS.

ELLIOT L. RICHARDSON, Secretary
of Health, Education, and Welfare,

APPELLANT.

Appeal from the United States District Court for the Southern District of West Virginia.

This cause came on to be heard on the record from the United States District Court for the Southern District of West Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed.

Filed, Jan. 28, 1972, SAMUEL W. PHILLIPS, *Clerk*

/s/ Samuel W. Phillips
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed Feb. 22, 1972, SAMUEL W. PHILLIPS, *Clerk*

No. 71-1757

MARION P. MORRIS o/b/o LINDA G. MORRIS,

APPELLEE,

versus

ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare,

APPELLANT.

ORDER

The petition for rehearing having been read and considered, it is, with the concurrence of Judge Butzner, *ORDERED,* that the petition be, and it is hereby, denied.

Judge Bryan dissents from the entry of this order for the reasons set forth in his dissenting opinion, heretofore filed.

For the Court:

/s/ Illegible
United States Circuit Judge

SUPREME COURT OF THE UNITED STATES

No. 71-6698

MARION P. MORRIS, on behalf
of LINDA MORRIS,

PETITIONER,

v.

ELLIOT L. RICHARDSON, Secretary
of Health, Education and Welfare.

On petition for writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 10, 1972

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